1948

P.H

Gro. Rls. 3162

9 16.9.48

Elec Dipl

Licence. Hospl Municipality

oil engine of 180 to 220 BHP in Che

mile Dr: 3283. Dy 13 Ld Ward

Permission for installation.

cancelled

C-3.

58/100-A

MADRAS 3 AUG P.D.

Indian Posts and Telegraphs Department.

No. 818

Received here at———H———M.

O 14/- Secret 3-h
Secretary education Public
Health medical
Government order
2111 37/MS Reply follows
Chairman

The sequence of entries at the beginning of this telegrams is—class of telegram, time handed in serial number (in the case of foreign telegram only), office of origin, date, service instructions (if any) and number of words.

This form must accompany any enquiry respecting this telegrams.

S Murthy & Co Printers Madras PSQ

From
Sri. P. Ramachandra Rao, B.A.,
Vice Chairman incharge,
Municipal Council, H o s p e t.

To
The Secretary to Government
Education & Public Health
Department,
M a d r a s.

C.No.7246/47.D.1. D/ 3-8-1948.

AUG 1948

Sir,

P154/M

In obedience to G.O.No.2437 Edn., & P.H., Department D/ 15-7-48 directing the Council to show cause in respect of the grant of a permission under section 250 to one Sri. N. Chennaveeriah, I beg to submit that the subject is placed before the Council which is expected to meet in a fortnight, by which time I shall submit the copy of the resolution to the Government. In the meantime I submit that Sr.Chennaveeriah has written to me on 7-5-48 saying that the entire concern including the machinery with component parts alongwith the building has been made over to one Sri.G. Seetharam Setti of Hospet who is now the present owner of the same. Post copy of the telegram dated 3-7-1948 is submitted.

CHAIRMAN

POST COPY OF THE TELEGRAM
D/ 3-7-48.

SECRETARY
EDUCATION PUBLIC HEALTH DEPARTMENT
MADRAS.

G.O. 2437/M.S. REPLY FOLLOWS.

CHAIRMAN

(True Copy)

P Ramachandra Rao
4/8

Chairman, M.C.,

From
Sri. M. Venkatakrishna Reddi,
B.A., L.T.,
Municipal Commissioner,
H o s p e t.

To
The Secretary to Government,
Public Health Department,
M a d r a s.
Through, Chairman, M.C., Hospet.

C.No.7246/47.D.1. D/23-8-1948.

Sir,

Sub :- Public Health - Installation - oil engine - notice of cancellation of licenses - Council's Resolution- submitted.

6341

Ref :- Government Order MS: No. 2437 P.H., D/15 - 7 - 1948. P15 c.f (M)

..o0o..

I beg to submit herewith a copy of Council's resolution No.670/ 17 - 8 - 1948 for favour of such action as Government may deem fit in the matter. I have nothing more to add to what I have already mentioned in my letter No.7246/47 D.1. D/ 10 - 2 - 1948.

M. Venkatakrishna Reddy
Commissioner. 24/8/48

ASSISTANT SECRETARY TO GOVERNMENT
26 AUG 1948
EDUCATION AND PUBLIC HEALTH DEPARTMENT

Copy of Council's Resolution No.670
Dated:- 17-8-48.

....

Read :- G. O. No. MS:2437 P.H., D/15-7-1948 requesting the Council to show cause why the licence granted for the installation of oil engine in 13/3283 to Sri.N. Chennaveeriah should not be cancelled for the reasons stated thereon.

P154/(M)

RESOLUTION :

The Council granted permission for installing the oil engine under Section 250 of the District Municipalities Act subject to the condition that it should be changed over to Electric Motor as soo as electricity is made available by the Municipality.

P.T.O.

This was specially considered inview of shortage of electric energy supply. Owing to influx of population to nearly 60% the number of existing floor mills are too inadequate to meet the demands of the increasing population. Hence this Council, requests onceagain the Government in view of the prevailing conditions to-allow the installation of the same. It is in the light industrial area and in a detached building.

Sd. P. G. Setty,
Chairman, M. C.,

(True Copy)

M. Venkatachalam
Commissioner. 25/8

Forwarded:

P.G.Setty 25/8

Chairman, M.C.,

Licence. Hospet Municipality. oil engine of 18 to 20 BHP in the site D. no 3283-A of 13 th Ward Permission for installation. Cancelled.

From the Commissioner, Hospet Mpty Cno. 7246.47 d 23.8.48 and 23.8.48.

Read again go no 2437 PH dated 15.7.48. order/Ms 3162 PH dated 16.8.48

The Hospet Municipal Council, in its Resolution no 169 dated 29.1.48, granted permission to one Sri N. Thennaveeraiah under section 250 of the M.D.M Act for the installation of an oil-engine of 18 to 20 HP in D. no 3283-A of 13 th Ward lying outside the industrial area.

2. Under the instructions contained in the appendix to go 4054 PH dated 3.9.40, only installations of electric motors not exceeding 20 HP can be permitted outside the industrial area. It is observed that the MHO did not recommend the grant of permission for the installation and that he was of opinion that the installation would be a source of nuisance to the public. The DPH and the DTP also are not in favour of permitting the installation.

3. For the reasons stated in para 2 above, the Hospet Municipal Council was directed in go 2437 PH dated 15.7.48 to show cause why the permission granted by the Council in its Resolution no 169 dated 29.1.48 should not be cancelled. In its resolution no 670 dated 17-8-48. the Council requests that the installation may be permitted. As it is

considered that the installation would a source of nuisance to the public, the reasons set out by the Council for allowing the installation are not acceptable. The Govt accordingly direct under section 252 of the M.D.M Act that the permission granted to Sri Thanmaneraich in the Municipal Council's resolution no 169 dated 29-1-48 be cancelled.

0.9.48
11.9.48

13/9/48

14/9/48

To
The Commissioner
Hospet Mysore Thro' the
Chairman

The DPH
The DTP

one Sq.

Cro 58100 A/48

From Ch. Chairman. Hospet Mpl Cl Cro. 7246-47 Dt. d 3.8 cr

Licence. Hospet Municipality. Installation of an oil engine of 18 to 20 B H P in the site Dr. No. 3283 of the BH Ward. Permission for installation Cancellation show cause

p15 cf 1(11)

Attention is invited to go 2437 PH dated 15.7.48 wherein the Hospet Municipal was asked to show cause within two weeks' time from the date of receipt of that order why the permission granted by the Council in its Resolution No. 169 dated 29.1.48 should not be cancelled. The Chairman, Hospet Municipal Council reports that the subject has been placed before the Council which is expected to meet in a fortnight and that by that time the Govt will admit the copy of the resolution to "get" and that the ownership of the installation in question has since passed to another gentleman. It is not clear why the Council should not consider & call a special meeting and consider the matter. However, there seems to be no harm in waiting for the Council's reply. It may be awaited till 25.8.48.

Ky
11.8.48
13-8-48

14/8/48

15/8/48 J.S.

p5-6 cf From the Commissioner. Hospet Mpty Cro 7246-47 Dt. dated 23.8.48.

Please see the letter from the Commissioner, Hospet Mpty at pp5-6 cf.

p3 cf 1(11)

As the Mpty has stated that the installation of the oil-engine will be a source of nuisance to the public, the reasons set out by the Council for allowing the installation cannot be perhaps accepted. It is therefore for consideration whether the permission granted by the Council

p6 cf

in its Resolution no 169 dated 29.1.48 may be cancelled.

Yes. Draft for circ please.

Minister Concerned

8/9/48

1.9.48

f.4.9.48

[redacted]

E. DPH.

The draft order below is for approval.

10.9.48

f.13.9.48

13/9/48

14/9/48

14/9 Hm (PH)

H. Dis. 47058

Received Post (47)

D1

OFFICE OF THE DIRECTOR OF PUBLIC HEALTH
2 JUL 1949
MADRAS

To

The Secretary to Government
Local Administration Department,
Fort St. George;

SN 27/4

17962
22 APR 1949

MADRAS.

LA. Dept (A)

Ag 27/4

Egp. H. U.O.

Subject:- Hospet Minicipality - grant of licence for industrial purposes - not reserved for such purposes - petition of G.Sita ramasetty - Hospet - orders solicited.

Ref:-
1. Applications of N.Cheniveeraiah of 1946, 7-2-49;25-7-49 etc, 7-5-48.
2. C.No. 8533/46 dated 17-1-47 of the Commissioner, Hospet.
3. L.Dis 6768/47 dated 10-11-47 and 14-11-47 D1
4. Council Resolution No.169 dated 29-1-48
5. C.No.7246/47 D1 dated 31-5-48
6. C.No.3797/48 D dated 4-6-48.
7. D.Dis.7246/47 D1 dated 6-11-48.
8. G.O.MS 3162 PH dated 16-8-48.
9. Final notice dated 12-11-48 and
10. Final notice dated N.No.27/49 dated 7-4-49 referring to D.Dis.No.246/47 D1 dated 6-1-1948.

LA. U.O. 17962/49-1A 27.4.49

ASSISTANT SECRETARY TO GOVERNMENT
32261
28 APR 1949
EDUCATION AND PUBLIC HEALTH DEPARTMENTS

Sir,

The humble representation of Sri G.Sitharama Setty, Flour Mill owner, Hospet, most respectfully showeth,

1. That the petitioner had obtained on transfer the Oil Engine etc, from one Sri.N.Cheniveeraiah of Hospet on 7-5-48 and the matter was brought to the notice of the Municipality.

2. That the said Sri.N.Cheniveeraiah had applied as far back as 1946 for grant of a licence for ~~him~~ installation of a flour mill in door No.3283 of the XIII Ward of the Municipality and for supply of energy.

'8. That the Municipality issued final notice dated 6-11-48 when the matter was under active consideration of the Executive authority and M.H.O. Again another notice N.No.27/49 dated 7-4-49 referring to D.Dis.No. 246/47 D1 dated 6-1-47 directing removal was sent out to the party. It is not known why action was not taken immediately after the receipt of the G.O.ccancelling the resolution. Evidently, the executive authority also must have felt after receipt of the G.O. that he had gone out of the way in making a reference to the Government under the provisions of the G.O.No.4054 dated 3-9-40. The Commissioner also must have felt that he was giving room for the party to take legal action against the Municipality for the reason that the orders obtained from the Government were not regular and legal. (2)

9. That the Commissioner had not taken care to ~~xxxxxx~~ ascertain if there were instances where the Municipal Commissioner granted licences in similar cases. If he had taken the trouble to do so, the matter would have been clear to him. This is the only solitary instance in which a reference was made to the Government by the Commissioner. It is not very difficult to conclude that the Commissioner allowed himself to ~~the~~ be influenced by extraneous circumstances.

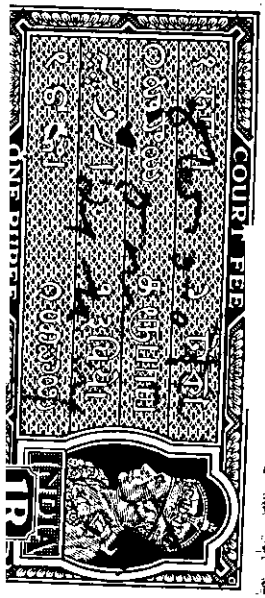
10. In conclusion, it is prayed that the Government will be pleased to reconsider its orders passed in G.O. M.S.3162 P.H. dated 16-8-48 and to issue instructions to the Commissioner to grant a licence to the pa at an early date.

A R Krishnaiah G. Sitaramaiah

Advocate for the Petitioner.

21-4-49

Address
G. Sitaramaiah
C/o A.R. Krishnaiah
Advocate
Hospet



Before the Secretary to government Local Administration Department

In the Court of the District Munsif Hospet

(15) Madras 5

No of 194

BETWEEN

ವಾದಿ Petitioner G. Sitaramacally ಪ್ರತಿವಾದಿ

Hospet- Bellary Dt

ಶ್ರೀ A:- R. M. Krishna Rao ನಕೀಲು ಹೊಸಪೇಟೆ ಇವರಿಗೆ

ಬಳ್ಳಾರಿ ಜಿಲ್ಲಾ Hospet ತಾಲೂಕು Hospet ಗ್ರಾಮದಲ್ಲಿರುವ

G. Sitaramacally

ಬರೆದುಕೊಟ್ಟ ವಕಾಲ್ತುನಾಮೆ ಏನೆಂದರೆ :—

ಈ ಕೋರ್ಟು 1945 ನೇ ಸಂವತ್ಸರದ ನಂಬರು "5" ಲ್ಲಿ ನಿಮ್ಮ ಪರ ಹಾಜರಾಗುವುದಕ್ಕೂ ಇದರಲ್ಲಿ ಬರಿಸಿದ ಬೇಕಾದ ಸಮಸ್ತ ವ್ಯವಹಾರ ಕಾರ್ಯಗಳನ್ನು ನಿಮ್ಮ ಪರವಾಗಿ ಜರಿಗಿಸುವುದಕ್ಕೂ ನಿಮ್ಮನ್ನು ಪ್ರತಿನಿಧಿಯಾಗಿ ಮಾಡುವುದಕ್ಕೂ ಅರ್ಜಿಗಳಲ್ಲಿ ವಗೈರೆ ನಿಮ್ಮ ಪರ ಹಾಜರು ಮಾಡುವುದಕ್ಕೂ ಹೀಗೆಲ್ಲಾ ಅಥವಾ ಇತರ ಉತ್ತರಗಳ ಅಮಲು ಜಾರಿ ವಿಷಯದಲ್ಲಿ ಬೇಕಾದ ಕಾರ್ಯಗಳನ್ನು ನಡಿಸುವದಕ್ಕೂ ಮೇಲ್ಕಂಡ ವಕೀಲರನ್ನು ನಿಮ್ಮ ಪರ ನಿಯಮಿಸಿಕೊಂಡಿದ್ದೇನೆ ಇದರಲ್ಲಿ ಆಗಬೇಕಾಗುವ ಡಿಕ್ರಿ ಮತ್ತು ಉತ್ತರಗಳು ಪೂರಾ ಫೈನಲ್ ಆಗುವವರೆಗೂ ಅವು ಮುಗಿಯುವವರೆಗೂ ಮಧ್ಯ ನಡೆಯುವುದಕಾಗಿ ಜಿಲ್ಲರ ಪ್ರೊಸಿಡಿಂಗ್ಸುಗಳಲ್ಲಿ ನಿಮ್ಮ ಪರ ಹಾಜರಾಗಿ ಸಮಸ್ತ ಕಾರ್ಯಗಳು ನಡಿಸುವುದಕ್ಕೂ ಕೋರ್ಟಿನಿಂದ ನಿಮಗೆ ಬರಬೇಕಾದ ದಸ್ತಾವೇಜುಗಳನ್ನು ವಾಪಸು ಪಡೆಯುವುದಕ್ಕೂ ಕೋರ್ಟಿನಿಂದ ನಿಮಗೆ ಬರಬೇಕಾದ ಸರ್ವ ವಿಧವಾದ ಹಣವನ್ನು ತೆಗೆದುಕೊಳ್ಳುವುದಕ್ಕೂ ಮೇಲಿನ ವಕೀಲರಿಗೆ ಅಧಿಕಾರ ಕೊಟ್ಟಿರುತ್ತೇನೆ ಪ್ರಸ್ತುತ ವಕೀಲರಿಗೆ ಫೀನಾನುಕೂಲ ಇದ್ದಲ್ಲಿ ಅವರು ಬೇರೆ ವಕೀಲರನ್ನು ಏಪಾಟುಮಾಡಿಕೊಳ್ಳಬಹುದು. ನಾನು ನಿಷ್ಕರ್ಷ ಮಾಡಿಕೊಂಡ ಫೀಜು ಕೊಡದೆಹೋದಲ್ಲಿ ನನ್ನ ಪರ ಇದರಿ ವಕೀಲರು ಕೆಲಸಮಾಡಲು ಬಿಡಬಹುದು.

Accepted
A R Krishnaiah
Advocate
21/4/45

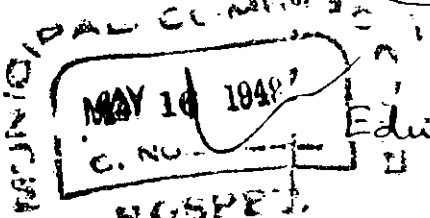
G. Sitaramacally

ಈ ವಕಾಲ್ತುನಾಮೆಯಲ್ಲಿ ಬರೆದಿದ್ದನ್ನು ಓದಿಹೇಳಿ ಸರಿಯೆಂದು ಒಪ್ಪಿ ನನ್ನ ಎದುರಿಗೆ ಕ್ರಮವಾಗಿ ಸಹಿ ಮಾಡಿ ಗುರ್ತುಮಾಡಲ್ಪಟ್ಟಿತು

ತಾರೀಖು ಉದ್ಯೋಗ

K S Shah
21/4/45

4246 = 5507/48-B.1



Education and Public Health Dept.

Endt: 3226-1/49-1 E1(PH) dated 3-5-49.

Referred to the Commissioner Hospet Municipality for remarks thro' the Director of Public Health.

6/5/49.

(By order)

Assistant Secretary

29.4.49

To.

The Commissioner,
Hospet Municipality.
Hospet.

C.No.8507/48-D1

Submitted.

2. The applicant has already gone to a Civil Court for redress.

3. Copies of the petitioner's affidavit and the plaint filed in the District Munsiff's Court, Hospet, are enclosed as appendices I & II respectively for favour of perusal. pp 9 + 11-13 in Tc

4. The Counters for the above filed on behalf of the Municipality are also enclosed as appendices III & IV respectively for favour of perusal. pp 15-17 in Tc

5. The District Munsiff, Hospet, has passed an interim injunction order restraining the Municipal Commissioner, Hospet from meddling with the installation and working of the Oil engine by the applicant.

6. The case is pending enquiry in the District Munsiff's Court, Hospet.

7. As the matter is subjudice and as the points raised in the petition have been generally answered in the counters filed on behalf of the Municipality (i.e. Appendix IV), I submit, I have no remarks to offer. p17 in Tc

8. Incidentally, however, I beg to state that the surmises made by the petitioner in Para 8. of his petition to the Government are incorrect and that the allegations made against the Commissioner in para 9 of the same petition are false and malicious.

M. Ramasubramanian Rao
Commissioner. 30/6/49

30/6

Forwarded.

1/7/49

Chairman, H.M.C., Hospet.

To
The Secretary to the Government,
Education and Public Health Department
Government of Madras.

Through
The Director of Public Health
Madras.

R.No.47058-1Hyg/49. Office of the Director of Public Health,
Madras, dated 26th Aug.1949.

FORWARDED.

The mill was inspected by me on 19-8-49. It is a rice and flour mill run by an oil-engine. The working of the mill will be a source of nuisance to the neighbourhood and so, permission is not recommended.

The party is running the mill without permission or licence. He has been prosecuted. The party has filed a suit in the Civil Court and obtained an injunction against the municipality.

No industrial or residential areas have yet been notified in the municipality.

ASSISTANT SECRETARY TO GOVERNMENT
3- SEP 1949
67728
EDUCATION AND PUBLIC HEALTH DEPARTMENT

for Director of Public Heal
Madras.

The Secretary to Government,
Education & Public Health Departmen
Fort St. George, Madras.

31/8/49

EHF

Please see the remarks of the Commr. of Panchayats. Hence after DPH - alone. As the matter is sub-judice no action can be taken now. The result of the suit filed by the Panchayat may be awaited. The Commr. may be reminded in the matter after a fortnight.

7-9-49

2/9

APPENDIX. I.

IN THE COURT OF THE DISTRICT MUNSIFF, HOSPET

O.S. 164/49 I.A.328/49

G.Sitaramasetty — Petitioner.

Vs

Hospet Municipal Council represented by the Commissioner M.Venkatakrishna-Reddy. — Respondent.

Petitioner's Affidavit.

I, Gududur Sita Rama Setty son of Iyappa aged 43, Vaisya, Flour Mill Owner, Hospet do hereby solemnly affirm and state as follows:-

I am the plaintiff in the above suit. I have filed this suit against the defendant for grant of injunction as the defendant Commissioner has threatned through a notice to remove the flour mill installation and its working. If the Commissioner removes it the plaintiff suffers considerable loss and machinery is liable to be damaged.

I am running the flour mill since 1948 after the Municipal Council granted license under Section 250 of the D.M.Act. and provisions of G.O.395, dated 28-9-41 and Government Memorandum 7922-3-F-2-P.W. dated 29-4-46 (Para 3.). I have paid the license fees for the years 47-48, 48-49 and 49-50. I have got fair chances of success in the said suit.

It is necessary in the interests of justice to grant a temporary injunction restraining the respondent from meddling with the installation and working till the disposal of the suit.

Petitioner.

Sworn to and signed before me this 22 day of April 1949.

IN THE COURT OF THE DISTRICT MUNSIFF, HOSPET.

O.S. 164/49 I.A. 328/49

G.SitaRamSetty — Petitioner

Vs

Hospet Municipal Council represented by the Commissioner M.Venkatakrishna-reddy. — Respondent.

Petition under Order 39 Rule 1 C.P.C.

For reasons stated in the accompanying affidavit it is prayed that the Hon'ble Court be pleased to grant temporary injunction restraining the respondent from meddling with the installation and working of the Oil engine located in D.No.3283 of the 13th Ward of the Hospet Municipality.

Advocate for the petitioner.

/True Copy/

M. Venkatakrishna Reddy 30/4/49
Commissioner. H.M.C.

APPENDIX. II.

IN THE COURT OF THE DISTRICT MUNISFF, HOSPET.

O.S.164/49

G.Sita Ram Setty		Plaintiff
	Vs	
Hospet Municipal Council represented by the Commissioner, Hospet.		Defendant.

Plaint Under Order VII Rule 1 C.P.C:

I. Plaintiff:- Gududur Sita Rama Setty son of Iyappa, 43 years, Vaisya, Flour Mill Owner, Hospet.
Address for service etc.:-
Sri.A.R.Krishnarao,
Advocate, Hospet.

II. Defendant:- Hospet Municipal Council, represented by its Commissioner, Hospet
Address for service same as above.

III. The plaintifff has obtained a flour mill machinery with an oil engine for installation in Door No.3283 of XIII ward in Hospet Municipality from Sri.N.Cheniveeriah in Janurary 1948. The said Cheniveeraiah had applied for grant of license to the defendant Municipality as far back as 1946 for installation of 20 Horse Power Electric Motor and for supply of energy. The defendant Commissioner stated in C.No.8535/46 dated 17-1-47 and L.Dis.6768/47 dated 10-11-47 that the site had not yet been approved by the Director of Public Health and that permission would be granted after the approval and incidentally stated that energy could not be supplied for the reason that the supply was not adequate and that his request would be considered when the power house position was improved.

IV. The plaintiff had no other alternative but to go in for an oil engine for running the flour mill in the said premises, and paid the necessary license fees for installation and running of the oil engine in the said premises for the years 47-48, 48-49, and 49-50.

V. The Municipal Council which is competant to grant licenses under Section 250 of D.M.Act after consdieration of the subject placed before it in the light of the provisions of G.O.No.395 dated 28-1-41 and Government Memorandum No.7922-3-F-2-P.H. dated 29-4-46 para 3. passed a resolution No.169 dated 29-1-48 granting license to the plaintiff.

VI. The defendant Commissioner made an irregular reference to the Government under Provisions of G.O.No.4054 dated 3-9-40 which did not govern the present case. The said G.O. applies to cases where industrial areas have already been demarcated. No such demarcation has been effected in the Hospet Municipality under the provisions of the said G.O. The Municipality has not uptill now acted under the provisions of Section 193(1) C of the D.M.Act to declare certain areas where constructions are prohibited. In the circumstances, a reference to the Government for the cancellation of the Resolution of the Municipal Council granting license to the plaintiff was quite irregular and unwarranted.

VII. The Government acting on the representation of the defendant cancelled the said resolution of the Council in G.O.M.S.3162 P.H. dated 16-8-48 which it would not have done if the Government's attention had been invited by the defendant Commissioner to the G.O.No.395 dated 28-1-41 and the Government Memorandum No.7922-3-F-2 P.H. dated 29-4-46 para(3).

VIII. The Municipal Council subsequently considered the said Government Order in one of its meetings and ivited the attention of the Commissioner to the irregular application of the G.O.No.4054 -Rdn and P.H. dated 3-9-40. The defendant Commissioner ought to have moved the Government for reconsideration of its orders of cancellation of the Council's resoluition 169 dated 29-1-48 as per G.O.No.395 P.H. dated 28-1-41 and the afforesaid Government Memorandum..

IX. The defendant Commissioner having failed to do so issued final notice N.No.27/49 dated 7-4-49 calling upon the plaintiff to remove the installed machinery within 3 days. The plaintiff has received the said order on 12-4-49.

X. The plaintiff has now moved the Government of his own accord for reconsideration of its orders in G.O.M.S.3162 P.H. dated 16-8-48 and praying for restoration of the said resolution and giving effect to it, as the said orders are unjust, irregular and illegal.

XI. The plaintiff appreheneds that the defendant Commissioner might effect removal of the installation departmentally before the representation of the plaintiff to the Government is disposed of. It has become necessary to move the Hon'ble Court ~~to~~ for grant of permanent injunction restraining the defendant from meddling with the installation and its working. The suit is in respect of a threatned act of the Municipal Commissioner, Hospet. Hence no notice under section 80 C.P.C. is necesary.

XII. The cause of action for this suit arose on 7-4-49 and 12-4-449 at Hospet within the jurisdiction of this Hon'ble Court.

XIII. For purpose of Court fee and jurisdiction, the suit is valued at Rs.10/- and a court fee of Rs.1-1-0 is paid thereon under Section 7 cl.IV(d). Relief for permanent injunction is valued at Rs.10/-

XIV, The palintiff prays the Ho'ble Court

(1) to grant a permanent injunction restraining the defendant from meddling ~~xxx~~ with the instalation and working of the plaintiff's Oil engine located in Door No.3283 of XIII Ward, Hos et Municipality;

(2) to award costs and

(3) to such other reliefs as the Hon'ble court deems fit, to grant in the circumustances of the case.

Advocate for the Plaintiff. Plaintiff.

Verification:- I, G.Sitaramsetty, the plaintiff herein do hereby declare that what is stated above in paras 1 to 14 is true to the best of my knowledge, information and belief. Signed and verified at Hospet on 22-4-49.

Plaintiff.

List of documents filed:-

(1) Final Order N.No.27/49 dated 7-4-49 issued to the plaintiff by the defendant.

Sd. A.R.Krishnarao. .22/4/49.
Advocate for plaintiff.

/True Copy/

M. Venkatasubbaiah 30/6/49
Commissioner. H.M.C.

30/6

Annexure III

O.S. 164/49 I.A. /49

G. Hanumanthappa ... Petitioner.

and

Hospet Municipality represented by the Commissioner, Hospet ... Respondent.

Counter on behalf of the Respondent

1. The petitioner is vexatious, bad in law and is not maintainable.

2. The petitioner is put to strict proof of all the allegations in the petition not expressly admitted herein by the respondent.

3. The installation of the oil engine by the petitioner for purposes of running the flour mill, is opposed to law and is illegal. The resolution granting the licence by the respondent was not proper and regular and was in excess of its powers, and was therefore issued without jurisdiction. Hence the Government be pelled to exercise its discretion after consulting the Director of Public Health. No permission was ever communicated to the petitioner and the installation of the machinery without it, is ipsofacto illegal and void. Hence licence for working the mill was refused by the Municipal Health Officer on 4-6-1948. The working of the flour mill is a continuing offence and the petitioner is liable for prosecution for the same. The allegations that the petitioner suffers considerable loss and the machinery is liable to be damaged are false and are denied.

4. The various G.O.s etc., relied on by the petitioner are irrelevant and do not support the petitioner's case. There is a prima facie case in favour of the petitioner. Acceptance of licence fee will not create any right in favour of the petitioner.

5. The interests of the public will suffer by the grant of the injunction and the respondent has a duty cast upon it to protect the health, safety etc., of the public in general and those residing in the vicinity of the installation in particular. Hence the balance of inconvenience is in favour of the respondent.

6. It is therefore prayed that in the interests of justice the petition may be dismissed with costs.

M. Venkatakrishnareddy
Respondent.
Commissioner.

Pleader for respondent.

I, M.Venkatakrishnareddy, Commissioner, do hereby declare that what is stated in paras 1 to 6 above is true to my ~~knox~~ knowledge, information and belief and believe that same to be true and signed and verified ~~xxx~~ at Kurnool this 24th day June 1949.

M. Venkatakrishnareddy
Respondent.
Commissioner.

Appeals

COURT OF THE DISTRICT DIVISION, HOSPET.

O.S. 164/49.

G.Sitaram Setty Plaintiff

Vs

Hospet Municipal Council,
represented by the Commissioner. Defendent.

Written Statement under O. VIII Rule 1 Civil Procedure Code on behalf of the defendant.

The defendant above named begs to state as follows:-

I. The suit is false, vexatious, bad in law and is not maintainable

II. The plaintiff is put to strict proof of all the allegations in the plaint not expressly admitted herein by the defendant.

III. The defendant is not aware of the sale of the oil engine from from Sri.K.Chennaveerish as alleged in para III of the plaint.

IV. The plaintiff has paid the license fee voluntarily even without the permission and license having been granted to him for the installation and working of the oil engine. Here pre-payment of the license fee or its acceptance by the defendant will not entitle the plaintiff to the permission or the license sought for. The installation of and the running of the oil engine is illegal and is a source of nuisance to the health and the interests of the public residing in the vicinity and the defendant council is bound under law to protect the same.

The arguments and surmises contained in para V of the plaint are are incorrect. The references quoted are irrelevent an inapplicable to the facts of the case. No resolution was ever communicated to the plaintiff and he cannot take advantage of the same. The Provincial Government cancelldd the said resolution granting the license under the powers vested in it by law, after giving due opportunity to the defendant to show cause against such cancellation.

As already stated in para V supra, the arguments enunciated in para VI of the plaint are unsound and incorrect. The reference by the Commissioner to the Government is correct and justified. Section 193 of the District Municipalities Act does not prohibit the Commissioner from refusing to grant a license when the proposed installation and running of the oil engine amounts to a nuisance in the opinion of the Health officer.

I. The surmise contained in para VII of the plaint is incorrect and unwarranted.

VIII. The allegations in para VIII of the plaint are not true and correct. The Council on the otherhand recorded the Government Order cancelling the resolution. There is no provision of Law requiring the Commissioner to move the Government to reconsider its orders. The Commissioner has acted legally and within his powers in making the said reference to the Government.

IX. The issuing of the final notice is correct and the plaintiff ought to have complied with it without a demur.

M. Venkatachalapathy Setty
P.T.O. D. A. Advt.

The defendant Council is not interested in the allegations contained in para X of the plaint. The plaintiff is bound by the orders of the Government which is final and which cannot be challenged by the plaintiff. The order of the Government is legal and valid. Hence this Honble Hon'ble Court has no jurisdiction to entertain the suit. Afortiori if the plaintiff felt aggrieved by the orders of the Provincial Government passed in G.O.Ms.No.3162 P.H. dated 16-8-48 the plaintiff ought to have sued the Government, if so advised, in case such a remedy is available. The Government is therefore a necessary party to the suit.

X(A) For the reasons stated in para X above, the suit is bad for nonjoinder of parties.

XI. The defendant is justified in pursuing the remedies prescribed by law and to abate the nuisance by removing the installation. The injunction sought for does not lie and is not warranted by law. The plaintiff is not entitled to the injunction prayed for.

XII. There is no cause of action as alleged against the defendant.

XIII. The suit is not maintainable without a prayer for setting aside the order of the Government cancelling the Council's resolution. Hence the Court fee paid is not correct.

XIV. The plaintiff is not entitled to any relief.

XV. It is therefore prayed that the suit be dismissed with costs.

Pleader for defendant.

M. Venkatakrishnareddy
Commissioner & defendant Council

Verification:- I, M.Venkatakrishnareddy, Commissioner, defendant Council, do hereby declare that what is stated above in paras I to XV is true to my knowledge, iformation and belief and believe the same to be true and signed and verified at Ongole this last day of June 1949.

M. Venkatakrishnareddy
Commissioner & defendant Council

H.H.C.

O.S. 164/49

Written statement under O. VIII Rule 1. C.P.C on behalf of the defendant.

64/4/11

21

EPH(E1)

pp 1-4 Cf From G. Seetharama Setty Flour mill owner Hospet pn d 21.4.49

p 7 Cf From the Commr Hospet m'ty C.no 8507/48.D, d 30.6.49

p 8 Cf From the DPH R.no 47058-1 Hyg/49 d 26.8.49

Sub: Licence - Hospet municipality - Flour mill of G. Seetharama Setty - Objection

Memo 32261/49-2 E1(PH) d 3-11-49

The attention of the Commr Hospet m'ty is invited to his letter cited and he is requested to state whether the suit filed by the petitioner has since been disposed of and if so he is requested to obtain and furnish a copy of the judgment at an early date

Commr
Hospet m'ty

29.10.49

29.X.11

1 Dec

(MOG)

2.

Noti : Pl see the orders on p 8 cf. The draft overleaf is for approval.

29.10.09

29.X.09

1.11.09

C.F. 32.

Public Health Department

Received ..... Registered .....

From (Name) Sri.M.Venkatakrishna Reddy, B.A.L.T.,
Designation Municipal Commissioner,
Station HOSPET.

To
The Secretary to the Government,
Education & Public Health
- Department,
MADRAS.

Enclosures:
1.Copy of the Judgement in C.C. No.2347/48 of the S.S.M.Hospet.
2.C.No.8507/48.D.1. dated 13-10-1949.

C. No. 8507/48 - D1 dated 8th November 1949.

Sir,

Sub:- Working of an oil engine by Sri.G.Seetharama Setty of Hospet without licence under section 249 of the D.M.Act - charge sheet for - Acquittal by the S.S.M. Hospet and action taken by the Municipal Health Officer, Hospet - information furnished.

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1 A charge sheet was laid against Sri.G.Seetharama Setty of Hospet for having run on 13-8-48 an oil engine of 16-20 B.H.P. in premises bearing Door No. 13/3283 without a licence under section 249 of the District Municipalities Act and in contravention of the Municipal Health Officer's orders refusing licence under section 249 (3) of the same Act.

2 The Stationary Sub Magistrate found the accused not guilty and acquitted him. A copy of the judgement is enclosed.

3 Earlier, the previous owner of the oil engine Sri.N.Chenna-Veeriah (now late) had applied to the Municipal Council for permission for installation of the oil engine in question in the same premises. The Municipal Council in their resolution No.169 dated 29-1-48 granted permission for the installation against the opinion of the Municipal Health Officer stating that the installation was a source of nuisance. On a reference made by the Municipal Commissioner in C.No.7246/47- D.1.dated 10-2-48 to the Government, the Government in G.O.Ms No.2437 P.H. dated 15-7-48 called on the Council to show cause why its resolution No.169 dated 29-1-48 granting permission for the installation should not be cancelled and after obtaining the Council's views thereon, cancelled the resolution No.169 dated 29-1-48 in G.O.Ms No.3162 P.H. dated 16-9-1948.

4 Meanwhile Sri.G.Seetharama Setty to whom the former owner transferred the ownership of the engine applied for permission for working of the oil engine under section 249 of the District Municipalities Act. The Municipal Health Officer refused him licence for the working of the engine. The accused worked the oil engine despite the refusal order; and a charge sheet was therefore laid under section 249 of the District Municipalities Act. The case ended in acquittal as already stated in para 2.

5 Upon the receipt of the G.O.No.3162 P.H. dated 16-9-1948, cancelling the Council's resolution No.169 dated 29-1-48, both the owners (the late and the present) were intimated about the cancellation of the Council's resolution and notices were also issued to them for the removal of the oil engine in pursuance of section 339 of the District Municipalities Act and also to stop running of the same. Thereupon Sri.G.Seetharama Setty filed a suit in the District Munsif's Court and brought an injunction on the Municipality restraining it from meddling with the oil engine and its working. This suit is pending in the District Munsif's Court, Hospet . I may add here that the injunction order was issued on 22-4-49, while the charge under reference related to 13-8-48.

P.T.O.

The judgement of acquittal is maifestly erroneous, against law and is based on presumptions. ~~Ixxxxx thexxfxxx addxxxxxd the Distxxxtxmagistxxxx for moving the HighxCourtxfxxxrxxixixxx A copy of~~. Therefore the District Magistrate has been addressed for moving the High Court for revision. A copy of the letter addressed to the District Magistrate is herewith enclosed for favour of your kind information.

As the judgement of the Stationary Sub-Magistrate, Hospet, is not only against ~~xx~~ law but has placed the interests of the Public Health in jeopardy, I request to address the District Magistrate for moving the High Court immediately for revision.

(Sd.) K. [illegible]
Municipal Commissioner, Hospet 9/11

1.12.35
[illegible]

... of the Stationary Sub Magistrate, Hospet.
Present:- Cri.JTC. Ratnaiya, B.A.(Hons.).
C.C.2347/48.

Complainant:- Municipal Health Officer, Hospet.
Accused:- G.Seetharama Chetty, Hospet.
Offence:- Continuing to run a flour mill with an oil engine in contravention of an order refusing a licence under Section 249(3) M.D.M.Act, punishable under section 313 (2) (c) M.D.M.Act.

Dates of hearing:- 15-10-48, 4-11-48, 19-11-48, 6-12-48, 20-12-48, 4-1-49, 25-1-49, 3-2-49, 17-2-49, 2-3-49, 10-3-49, 24-3-49, 5-4-49, 23-4-49, 6-5-49, 19-5-49, 28-5-49, 8-6-49, 21-6-49, 2-7-49, 16-7-49, 2-8-49, 13-8-49, 26-8-49, 8-9-49, 20-9-49, 5-10-49, 15-10-49 and 19-10-49.

The accused has been charged before this Court with having continued to run a flour mill operated by an oil engine as on 13-8-48 at Door No. 3283 of Ward 13 of Hospet in contravention of an order refusing a licence ~~hx~~ under section 249(3) M.D.M.Act, and thus committed an offence punishable under section 313(2)(c) M.D.M.Act.

The particulars of the offence were stated to the accused and he was asked to state if he had any reason to shew why he should not be convicted. He denied the offence stating that only a notice informing him that he had not paid the licence fees had been served on him and not one refusing him a licence.

At this stage the prosecution filed a petition under section 227 requesting that the charge sheet may be amended to read "The accused continued to use Door No.13/3283 for running an oil engine (For a flour mill) without licence under section 249 M.D.M.Act and in contravention of the order issued to him under section 249(3) M.D.M.Act refusing him a licence", thus committing an offence punishable under section 313(1)(b) and (c) M.D.M.Act read with section 249 of the same Act. The petition was allowed and the accused informed of the amended charge but he had nothing fresh to plead.

The prosecution evidence is that the Sanitary Maistry Basappa (P.W.1) of the Hospet Municipality saw the accused running a flour mill with an oil engine on 13-8-48 at Door No.3283 of Ward 13 and informed Sanitary Inspector Vencobachar (P.W.3) as he had no licence for running it. The flour mill had been first found running on 24-5-48 and a notice (Ex.P2.) dated 24-5-48 was served on the accused on the next day directing him to apply for a licence within 3 days on pain of prosecution. The accused accordingly credited the licence fee and submitted an application (Ex.P.3) on the same day requesting for a licence. But in his C.No.3797/48 D.I. dated 4-6-48 (Ex.P.4) the Municipal Health Officer gave the accused an endorsement refusing him a licene and directing him to stop running the oil engine. This was acknowledged by the accused in the delivery book (Ex.P.1) when Peon Basappa (P.W.2) delivered it. As the accused ran the mill on 13-8-48 in contravention of the Municipal Council's Resolution No.151-2(1) dated 3-1-48 (publish -ed in the District Gazette dated 14-1-48 (Ex.P.5) requiring the taking out of licences for certain trades including the one on hand and failed to comply with the Municipal Health Officer's notice he was prosecuted. The previous owner had been informed in the Municipal Health Officer's endorsement dated 15-11-48 (Ex.P.5A) that the installation would be a nuisance to the public.

Four witnesses were examined for the defence. D.W.1, V.A. Rahiman Sahib, A Municipal Councillor, was a member of the Sub-Committe constituted in Resolution No.133 dated 19-12-47 to inspect the engine on the application of the previous owner for a licence to run it. This Sub-committee submitted a report (Ex.D.4) recommending the issue of a licence by the Municipal Council. No industrial area has been fixed for Hospet. There was another flour mill running near that of the accused. There was no complaint from neighbours that the accused's oil engine was a source of nuisance. Gowripuram Somappa (D.W.2), a merchant's clerk, J.Hanumanthappa (D.W.3), a ryot, and Sannekkappa (D.W.4) also a ryot, who all live in the neighbourhood of the flour mill said that it was

T.O.

it was not a source of any kind of nuisance to them or the neighbourhood. On the other hand they wanted the flour mill there.

P.W.3 under cross-examination filed receipt Nos.665 and 666 being receipts for Rs 55/- each paid by the previous owner of the flour mill on 30-1-48 towards the licence fees. He had been granted permission for the installation of the oil engine in Resolution No.169 dated 29-1-48 (Ex.D.6) of the Municipal Council. The Government, however, in its Order Mis.No.2437 P.H. dated 13-7-48 (Ex.P.3a) asked the Council to show cause why the permission granted by it should not be cancelled. Earlier the Municipal Commissioner had sought GovernmentOrders on the Resolution in his C.No.7246/47D.1 dated 19-2-48 (Ex.D.5) supporting the stand taken by the Council. But the Government in its Order 3.62 dated 16-6-48 (Ex.P.4A) cancelled the permission given by the Council and this was communicated by the Commissioner to the previous owner (Channaveeriah) with a copy marked to the accused in his C.No.7246/47 D.1 dated 6-11-48 (Ex.D.3). P.W.3 also admitted that no area of the Hospet Municipality has been declared as an Industrial Area, that there was no prohibition on the running of flour mills or oil engines in Ward 13 and that no protests had been received against the flour mill of the accused. A notice (Ex.P.3) had been served on Channaveeriah, the previous owner, but it was not followed up with his prosecution. Earlier the Municipal Health Officer had given an endorsement dated 20-11-47 that the installation would be a source of nuisance. The witness was also aware of G.O.1478 dated 23-8-48 (Ex.D.8) which had left the question of permitting installations of oil engines to the discretion of the Municipal Council, and of Government Memo 7922-3-F-2-P.H. dated 29-4-46 (Ex.D.9) in which the Government declared that it was for the Council to grant permission under section 250 of the M.D.M.Act for the installation of an oil engine and that G.O.4054 dated 3-9-40 (Ex.D.10) did not apply to installations but only industries.

There are two points for decision in this case :-
(1) did the accused run the oil engine without a licence under section 249 M.D.M.Act, and
(2) was the Municipal Health Officer's order in C.No.3797 /48D.1 dated 4-6-48 (Ex.P.4) lawfully made?

An interesting and important aspect of this case is that the oil engine originally belonged to one Channaveeriah and he had paidd the licence fees on 30-1-48, a day after the Council accorded permission for the installation of the engine but the Municipal authorities shelved the matter until 4-6-48(that is, more than four months later) when they informed the present owner (accused) that no license could be granted as the question of allowing the installation as per the Council's Resolution had been referred (by the Commissioner) to the Government. This was a bad reference inasmuch as in its Memo 7922-3-F-2-P.H. dated 29-4-46 the Government had clarified that it was for the Council to grants pe mission under section 250 of the M.D.M.Act for the installation of an oil engine. The Commissioner should have put the Council's Resolution into effect. It will be noticed that both he and the Chairman had strongly recommended the installation but still the question of issuing a license running the oil engine was burked and no intimation granting or refusing a licence was given to the previous owner or to the present one. The accused paid his licence fee on 25-5-48 and on 13-8-48 he ran the oil engine. The only point for consideration is whether the Municipal Health Officer's order dated 4-6-48 is lawful. Under section 249 (1) M.D.M. Act the question of issuing a licence was pending with the Chairman and the Municipal Health Officer was not justified therefore in refusing a licence for he was not the licencing authority. In the absence of a valid notice from the only empowered licencing authority the accused was perfectly justified in running the engine more than two months after paying the licence fee for the Municipality was bound to grant him a licence or refuse one within a month and in the absence of such notice the accused was entitled to presume thatmm he had been granted a license. [(Vide I.L.R [Madras [XL-1917 P.899)] as clearly indicated in Section 249(5) M.D.M.Act particularly when a similar mill a few yards away had a licence. The accused is therefore not guilty of an offence under section 249(1) read with section 249(1) M.D.M.Act.

It has been decided already in the preceding paragraph that the Municipal Health Officer's order dated 4-6-48 ~~xxx~~ was not lawfully made as it carried no authority. Violation of an order which is itself not lawful or legally binding cannot constitute an offence. The accused is therefore not guilty of an offence under section 313(1)(c) read with section 249(3) M.D.M.Act.

The accused is therefore acquitted of both the charges under section 245 (1) Cr.P.C.

Pronounced in open Court.

Sd. J.C.Ratnaiya
24-10-49.
Stationary Sub Magistrate.

List of P.Ws.:-1.M.Basappa, Municipal Sanitary Maistry, Hospe
2. Ramappa, Municipal Health Officer's peon, Hospet
and 3. K.S.Venkobachar, Sanitary Inspector, Hospet.

List of D.Ws.:-1. Veerapur Abdul Rahiman Sahib, Municipal Councillor, Hospet.
2.Gowripur Somappa, Merchant's clerk, Hospet.
3.J.Hanumanthappa, Ryot, Hospet, and
4.Sannakkeppa, Ryot, Hospet.

List of Exhibits:-
P.1.Acknowledgement of accused dated 5-6-48 in tappal delivery book
P.2.M.H.O's notice to accused dated 24-5-48 to obtain licence.
P.3.Application of accused dated 24-5-48 for licence.
P.4.M.H.O's C.No.3797/48D.1 dated4-6-48 refusing licence.
P.5.Municipal Council's Resolution No.151-2(1) dated 3-1-48 published in District Gazette dated 14-1-48 declaring the running of oil engines as a trade for which a licence was required.
P.3A. G.O.2437 dated 15-7-48,
P.4A. G.O.3162 dated 26-9-48,
P.5A. Endorsement of M.H.O dated 15-11-47 to Channaveeriah.

D.1 & D.2 Receipts for payment of Rs35/- for licence fees by Channaveeriah on 30-1-48.
D.3. Commissioner's order dated 6-11-48 communicating cancellation of permission for installation.
D.4. Report of Sub-committee dated 26-12-47 on the oil engines;
D.5. Commissioner's reference 7246/47.D.1 dated 18-2-48 to the Government regarding the installation;
D.6. Council's resolution No.169 dated 29-1-48;
D.7. Notice of prosecution dated 31-5-48 given by the Commissioner to Chennaveeriah;
D.8. G.O.1478 Edn.& P.H. dated 23-5-44;
D.9. Govt.Memo.7922-3-F-2-P&H- dated 29-4-46; and
D.10. G.O.No.4054 dated 3-9-40.

Sd.J.C.Ratnaiya
24-10-49.
Stationary Sub Magistrate, Hospet

(Typed)
B Bheemeswara Rao
3-11-49
Municipal Health
Officer

Further, it was [illegible] of the accused in the present case. The [illegible] would be applicable only [illegible] had not been refused licence within 30 days from the date of his application for licence for working the oil engine. In the present case the accused's application for licence (Ex.P.3.) was received on 25-5-48 and the orders refusing licence (Ex.P.4.) was communicated to him (accused) on 5-6-48 (Ex. P.1., i.e.within the statutory period of 30 days laid down in section 249(5) of the District Municipalities Act. Evidently, the Hon'ble Court based its finding on the wrong presumption that the Municipal Health Officer who refused the licence was not the competent authority to do so. The learned Magistrate having taken on file several charge-sheets laid by the Municipal Health Officer under section 249 of the Madras District Municipalities Act, on previous occasions and disposed them off, should not have had any doubt regarding the powers of the Health Officer especially when no such point was raised by the defence Counsel or by the Court at any stage of the enquiry or at the time of argument.

4. The Hon'ble Court wrongly mixed up two different issues namely, the installation and the working of the oil engine. It did not take note that there was no application from the previous owner of the oil engine for licence for its working under section 249 of the District Municipalities Act. No such application was on record before the Court. It also erred in construing the money receipt dated 30-1-48 (Ex.D.1) as an application of the previous owner for licence under section 249 of the District Municipalities Act. A receipt for payment of licence fee cannot substitute an application for licence under section 249 of the District Municipalities Act. Even if it amounted to an application in its opinion, the Hon'ble Court failed to note that licences are granted for the official year only and that the supposed failure of the Municipality to refuse licence within 30 days from 30-1-48 could have at the worst entailed the granting the licence for the year 1947 - 1948 only. The charge laid against the accused was as for running the oil engine on 25-8-48 which date falls in the official year 1948-49 and therefore, the prior conduct of the Municipality on the alleged application of the previous owner dated 30-1-48 could not have anything to do with the present case. The accused applied for licence for working the oil engine for the first time on 25-5-48 only and this was an application for the year 1948-49. And licence was refused by the Municipal Health Officer within 30 days from the date of the receipt of this application. This order of refusal is therefore valid and legally binding on the accused. The Hon'ble Court also failed to note that the previous owner never worked the oil engine.

5. The Hon'ble Court erred in observing that the Commissioner ought to have given effect to the Council's resolution granting permission for the installation of the oil engine. It failed to note that the Council's decision to grant permission for the installation of the oil engine was not the final word on the subject The Hon'ble Court omitted to note that the Government have powers vested in them by section 252 of the Madras D.M. Act to modify the Council's resolution granting permission and that in the present case the Government have in G.O. Rp. 3162 ..H. dated 15-7-48 (Ex.P.4 a.) after giving an opportunity to the Council (Ex. P.3 a) cancelled the Council's resolution granting permission for the installation of the oil engine.

6. The learned Magistrate was in error in observing that the existance of a mill a few yards away from the accused's justified his (accused) action in working his own mill. The fact that there was another mill and that a licenced one, working in the neighbourhood of the accused's oil engine cannot entitle the accused to run his oil engine without a licence.

7. The Hon'ble Court erred in attaching undue weight to the D.W.s' version that there was no nuisance caused by the working of the accused's oil engine. It is on record that the Health

Health Officer has opined that the working of the oil engine is a nuisance.

For the reasons stated above, it is prayed that the District Magistrate may be pleased to move the High Court for revision, as the working of the oil engine is a nuisance in the neighbourhood and notice had been served but the oil engine nevertheless has been working the oil engine pursuant on the judgment of the Stationery Sub-Magistrate, accept, it is prayed that in the interests of justice, Public Health and the Safety, the High Power may be moved urgently.

3-11-49.

Municipal Health Officer,

Encl:
Xxx appendices A to

C.F. 32 (a).

Public Health Department

From (Name) Sri.M.Venkatakrishna Reddy, B.A.L.T.M.,
Designation Municipal Commissioner,
Station HOSPET.

Received 21 Registered 37

To

The Secretary to the Government,
Education & Public Health department,
MADRAS.

Through:
The Chairman,
Municipal Council, Hospet.

SECRETARY TO GOVT. MADRAS
14 NOV 1949
PUBLIC HEALTH (Sirs)

Enclosure

C.No. 8507/47-D.1 dated 10-11-1949.

Sub:- Licence- Hospet Municipality - Flour Mill of Sri.G.Seetharama Setty.

88675

Ref:- Memorandum No.32261/49-2 E1 P.H. dated 3-11-49 of the Government of Madras. p2/ante

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The suit and the injunction application (Os.164/49 and I.A.328/49) filed by Sri.G.Seetharama Setty in the District Munsif's Court, Hospet are still pending. They are posted o 21-11-49. Copy of the judgement will be obtained and submitted fter the suit is disposed of.

M. Venkatakrishna Reddy
Municipal Commissioner, 12.11.49
Hospet.

14/11

Forwarded pgsetty 11/11/49
Chairman, Municipal Council, Hospet.

Department

From (Name) Sri.M.Venkata Krishna Reddy, B.A.L.T.,
Designation Municipal Commissioner,
Station ---- H O S P E T.

Received ---- Registered ----

To

The Secretary to Government,
Education & Public Health Department,
Government Of Madras, Madras

Through,
The Chairman, Municipal Council,
Hospet.

ASSISTANT SECRETARY TO GOVERNMENT
ENCLOSURES
NOV 1949
PUBLIC HEALTH DEPARTMENT

Enclosures ----

C.No. 8507/48-B7 dated 10-11-1949.

Sir,

Sub:-Working of an oil engine by Sri.G.Seetharamasetty of Hospet-without licence under section 249 of the District Municipalitites Act - charge sheet-for acquittal by Stationary Sub.Magistrate, Hospet and action taken by the Municipal Health Officer Hospet information-furnished.

8879

I am herewith submitting a copy of my letter C.No.8507/48 dated 8-11-49 which was despatched to the Government direct by mistake without a note of the Chairman. The mistake has now been rectified.

Enclosures have been submitted with the original letter dated 8th November 1949.

Municipal Commissioner,
Hospet.

10/11

D.F. 32.

Department ... Received ... Registered ...

From (Name) Sri.M.Venkatakrishna Reddy, B.A.L.T.,
Designation Municipal Commissioner,
Station H O S P E T.

To
The Secretary to the Government,
Education and Public Health-Department,
Through: M A D R A S.
The Chairman, Municipal Council
H O S P E T

Enclosures:
1. Copy of the judgement in C.C. No.2347/48 of the S.S.M. Hospet.
2. C.No.8507/48.D.1 dated 3-11-48.

C.No. 8507/48 - D.1 dated 8th November 1949

Sir,

Sub:- Working of an oil engine by Sri.G.Seetharama Setty of Hospet without licence under section 249 of the D.M.Act - charge sheet for - Acquittal by the S.S.M. Hospet and action taken by the Municipal Health Officer Hospet - information furnished.

A charge sheet was laid against Sri.G.Seetharama Setty of Hospet for having run on 13-8-48 an oil engine of 18-20 B.HP. in premises bearing Door No;13/3283 without a licence under section 249 of the District Municipalities Act and in contravention of the Municipal Health Officer's orders refusing licence under section 249 (3) of the same Act.

The Stationary Sub-Magistrate found the accused not guilty and acquitted him. A copy of the judgement is enclosed.

Earlier the previous owner of the oil engine Sri.N.Chenna Veeraiah (now late) had applied to the Municipal Council for permission for the installation of the oil engine in question in the same premises. The Municipal Council in their resolution No.169 dated 29-1-48 granted permission for the installation against the opinion of the Municipal Health Officer stating that that installation was a source of nuisance. On a reference made by the Municipal Commissionr in C.No.7246/47-D.1 dated 10-2-48 to the Government, the Government in G.O.Ms.No. 2457 P.H. dated 15-7-48 called on the Council to show cause why its resolution No.169 dated 29-1-48 granting permission for the ibstallation should not be cancelled and after obtaining the Council's views thereon, cancelled the resolution No.169 dated 29-1-48 in G.O.Ms.No.3162 P.H. dated 16-9-48. K/7867

Meanwhile Sri.G.Seetharama Setty to whom the former owner transferred the ownership of the engine applied for permission for working of the oil engine under section 249 of the District Municipalities Act. The Municipal Health Officer refused him licence for the working of the engine. The accused worked the oil engine despite the refusal order and a charge - sheet was therefore laid under section 249 of the District Municipalities Act. The case ended in acquittal as already stated in para 2.

K/7867

Upon the receipt of the G.O.No.3162 P.H. dated 16-9-48 cancelling the Council's resolution No.169 dated 29-1-48, both the owners (the late and the present) were intimated about the cancellation of the Council's resolution and notices were also issued to them for the removal of the oil engine in pursuance of section 339 of the District Municipalities Act and also to stop running off the same. There upon Sri.G.Seetharama Setty filed a suit in the District Munsif's Court and brought an injunction on the Municipality restraining it from meddling with the oil engine and its working. This suit is pending in the District Munsif's Court, Hospet. I may add here that the injunction order was issued on 22-4-49 while the charge under reference related to 13-8-48.

P.T.O.

The judgement of acquittal is manifestly erroneous, against law and is based on presumption. therefore, the District Magistrat has been addressed for moving the High Court for revision. A ~~xx~~ A copy of the letter addressed to the District Magistrate is ~~xxxx~~ herewith enclosed for favour of your kind information.

As the judgement of the Stationary Sub-Magistrate is not only against law but has placed the interests of the Public Health in jeopardy. I request to address the District Magistrate for moving the High Court immediately for revision.

Municipal Commissioner, Hospet.

Forwarded

Chairman,
Municipal Council, Hospet.

43

Home dept

Urgent

Memo No. 12516 7-D/ce' 97.12.ce.

Criminal Justice - Appeal against acquittal - C.C. No. 2347/48 on the file of the S.S.M., Hospet, Bellary dt - Application

Ref:-

From the Municipal Commissioner, Hospet, C.No. 8507/48-D-1 dt 8.11.49

Referred to the D.M., Bellary for remarks which should be subtd. not later than 1-1-1950.

6.12.49

7.12.49

To the D.M., Bellary

(with a copy of pp 41-42 C and pp 25-29 C in orgl & Rtd. with reply)

130779

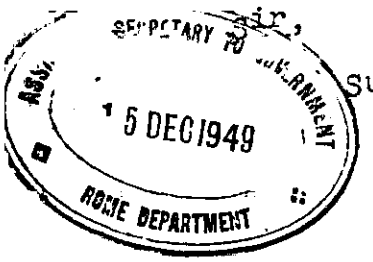
15 Rem

REVENUE DEPARTMENT.

From
Sri N.V. Sugavanam,
District Magistrate,
Bellary.

To
The Secretary to Government,
Home Department,
Madras.

Ref.No. 3629/49 E1 dated 12-12-1949.



Sub: Criminal justice - appeal against Acquittal - C.C. 2347/49 on the file of Stationery Sub Magistrate Hospet - proposals.

****

The Municipal Health Officer Hospet prosecuted Shri. G. Sitarama Chetty of Hospet for having run on 13.8.49 an oil engine to work a flour mill without a licence under section 249 of the District Municipalities Act and in spite of the order of the Municipal Health Officer dated 4.6.1948 refusing licence for the working of the said engine.

2. The Stationery Sub Magistrate Hospet who tried the case, acquitted the accused holding "that the Municipal Health Officer's order dated 4.6.48 was not lawfully made and it carried no authority". As the Judgement of the Stationery Sub Magistrate is wrong, I request that the Government may be pleased to move the High Court in appeal.

3. Copy of the Judgement and grounds of appeal in duplicate are enclosed. Government endrosement No.125167 D/ 49-1 dated 7-12-1949 is resubmitted.

VK.13.12.

1/2 [illegible]
For District Magistrate.

Copy to the Municipal Health Officer, Hospet.
Copy to the Stationery Sub Magistrate, Hospet with the case records returned.

Grounds of Appeal.

1. The judgment of the lower court acquitting the accused is against law, weight of evidence and probabilities of the case.

2. The lower court was wrong in holding that the Municipal Health Officer was not the licensing authority and that the question of issuing license was pending with the Chairman. G.O.No. 327 dated 24.1.1941 empowers the Municipal Health Officer to issue licenses under Section 249, District Municipalities Act.

3. The lower court was wrong in holding that the accused was entitled to presume the grant of license. The lower court failed to note that the deposit of license fee did not apply to the official year 1948-49. The deposit of license fee referred to applied for the year 1947-48.

4. The lower court should have held that the accused was guilty in that the M.H.O. refused the license within the 30 days of the receipt of the application by the accused dated 25.5.1948. The order of refusal was communicated on 5.6.48 (Ex.P-1) within 30 days as required by Section 249(5) of the District Municipalities Act. The lower court ought to have held that the order of refusal of license was valid and binding on the accused.

5. The lower court failed to note that under Section 252 of the District Municipalities Act, Government has powers to modify Municipal Council's resolution. The lower court ought to have held in view of government's cancellation of permission granted by the council, the accused had not been granted license and therefore guilty.

6. The lower court was wrong in holding that the existence of a mill nearby entitled the accused to run his oil Engine without license. The lower court ought to have held that the opinion of the M.H.O. whether it was nuisance was binding and that the opinion of the neighbours.

7. In any event, the lower court has erred in construing the law and in appreciating the evidence. It is prayed that the judgment acquitting accused be set aside and the accused be dealt with according to law.

47

Home dept

Memo No. 125167 D/49-3 dt 17.12.49

Criminal Justice – Appeal against acquittal – C.C. No. 2347/48 on the file of the S.S.M., Hospet, Bellary dt. – Application

Ref:- From the D.M., Bellary No. 3629/49 E.1. dt 12-12-49

—

Referred to the P.P., Madras for remarks which should be subtd not later than 6.1.1950

17/12/49

Dfw. E in orgl Rw 26/12

17.12.49

17-12-49

The P.P., Madras

With copy of pp 45-46 C.f copy of pp 41-42 C.f and (G) in orgl to be sent with reply

Revenue Department. 47 1381

From To

E.C.Allardice Esq., I.C.S., The Dist.Magistrate (Judl)
Collector,Bellary. Gooty.

L.Dis.No.3629/49.E.1.Magl.dated 30.12.49.

Sir,

Sub:Criminal justice-Appeal against acquittal -C.C.No. 2347/49 on the file of the Sty.Sub Magistrate, Hospet - Proposals.

oooOooo

The correspondance of 44 pages relating to the above subject is herewith transferred to you for further action.

For Collector.

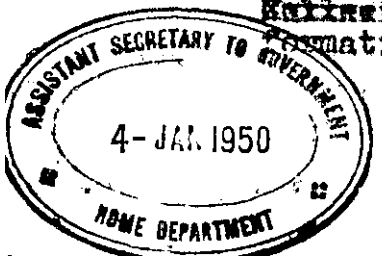
hrs/31.12.1949. 31/12
D.M.O.

(2)

Copy to the Secretary to Government, Home Department, Madras. For information in continuation of this office C.No. 3629/49.E.1.dated 12.12.1949.

p 45 ante

Copy to Sty.Sub Magistrate, Hospet and Mgmt.Asst Clerk, Municipal Health Officer, Hospet, for information.



28/1

GOVERNMENT OF MADRAS

ABSTRACT

Criminal Justice--Appeal against acquittal C.C.No.2547-48 on the file of the Stationary Sub Magistrate, Hospet, Bellary District--Application--Sanctioned

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HOME DEPARTMENT

G. O. Ms. No.198 Dated 17th January 1950

Read the following :-

From the District Magistrate Bellary No.5629-49 E.1. dated 12--12--1949

From the Public Prosecutor, Madras Opn. No.138-49 dated 6-1-50

O R D E R :

Under Section 417 of the Code of Criminal Procedure 1898, the Public Prosecutor Madras is requested to present an appeal to the High Court against the acquittal by the Stationary Sub Magistrate, Hospet, Bellary district of the accused in C.C.No.2347-48 on his file.

(BY ORDER OF HIS EXCELLENCY THE GOVERNOR)

S. A. Iyengar
DEPUTY SECRETARY TO GOVERNMENT

To: The Public Prosecutor, Madras (with enclosure) in original
The District Magistrate Bellary (with enclosure)
Copy to the Education and Public Health Department (with enclosure)
Copy to the Municipal Commissioner of Hospet through the Education and Public Health Department (with enclosure)

(True copy/By Order)

EPH(T)

Maybe Hd Clerk Lodged.

K.M.R. 17.1 23/1/50.

SUPERINTENDENT.

Read :-

Copy of letter Opn. No.136-49 dated 6th January 1950 from the Public Prose-cutor, Madras to the Secretary to Government Home Department, Madras.

—

Sub :- Appeal against acquittal C.C.No.2547-48 S.S.M. Hospet Forwarding opinion.

With reference to Memorandum No.125167 D/49-3 dated 17th December 1949 I have the honour to give below my opinion in the above matter.

2. The papers received for reference are returned herewith.

OPINION

The Stationary Sub Magistrate, Hospet, tried and acquitted the accused for the offence of running an oil engine without licence in contravention of the provisions of Section 249 District Municipalities Act. The Municipal Council on 29—1—1948 granted permission for the installation of an oil engine against the opinion of the Municipal Health Officer. The Government in G.O. No.2437 Public Health dated 15—7—1948 called upon the Municipal Council to show cause why its resolution could not be cancelled and in fact the Government in its G. O. No.3162, Public Health dated 16—9—48 did cancel this resolution Meanwhile the accused to whom the former owner transferred the ownership of the engine applied for permission under Sec. 249 of the District Municipalities Act. The Municipal Health Officer refused him licence but the accused worked the engine despite the order. The Magistrate acquitted the accused on the ground that the Municipal Health Officer cannot refuse to give the licence. G. O. No.527 dated 24—1—1941 empowers the Municipal Health Officer to issue the licence required under Sec. 249 District Municipalities Act. The view of the Sub Magistrate is incorrect.

P. T. O.

I am of opinion that an appeal against acquittal is likely to be successful.

(True copy)

K.M.R.17.1

SUPERINTENDENT.

EPH (E1)

C.no 32261/49 From Sri G. Seetharama Shetty Hospet
pn d 21.4.49

p1 Cl- From the Commr Hospet m'ty C.no 8507/48 D1
p2 Cl- From the Commr Hospet m'ty C.no 8507/48 D1 d 30.6.49
3 Cl- From the Commr Hospet m'ty C.no 8507/48 D1 d 8.11.49
4 Cl- From the Commr Hospet m'ty C.no 8507/48 D1 d 10.11.49

Sub: Licence - Hospet Municipality - installation of an oil engine of 18 to 20 BHP in D.no 3283 of 13th ward.

In G.o 3162 PH dated 16.9.48
8 Cl- the Govt directed the Hospet Mcl to cancel the permission granted by it to one Sri N Chennaveeriah for the installation of an oil engine of 18 to 20 HP. in D.no 3283A of the 13th ward of the m'ply. The Mcl according
10 Cl- p2 Cl- Cancelled its resolution granting permission to the installation.

But earlier, one Sri G. Seetharama
12 Cl- p2 Cl- Setty had obtained on transfer the flour mill and oil engine from Sri N. Chennaveeriah and applied to the Mcl for permission for working the mill. The MHO, it is stated refused permission
p2 Cl- but the party worked the oil engine despite the refusal order. The Mcl thereupon laid a charge sheet against the accused but the Commr ~~has reported that~~ the Sty. Sub Magistrate found the accused not guilty and acquitted him
14 Cl- The Commr has now represented that this judgment is against law and is based on presumptions. He ~~and~~ has therefore addressed the D.M to move the High Court for revision. He ~~therefore~~ also requests Govt to ~~address the D.M immediately approve his action~~ address the D.M for moving the High court for revision. ~~This may be approved.~~

When the petitioner was refused a

EPH (E1)

C.no 32261/49 From Sri G. Seetharama Shelly Hospet
pn d 21.4.49

Ph 1-4 cf-

From the Commr. Hospet m'ty C.no 8507/48 D1
From the Commr. Hospet m'ty C.no 8507/48 D1 d 30.6.49
From the Commr. Hospet m'ty C.no 8507/48 D1 d 8.11.4
From the Commr. Hospet m'ty C.no 8507/48 D1 d 10.11.

Sub: Licence - Hospet municipality - installation of an oil engine of 18 to 20 B
in D.no 3283 of 13th ward.

In G.o 3162 PH dated 16.9.48

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M' or 1, p 2-3 cf- cancelled its resolution granting permission to the installation.

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1 ma 1, p 2 3 cf- Setty had obtained on transfer the flour mill and oil engine from Sri N. Chennaveeriah and applied to the mcl for permission for working the mill. The MHO, it is stated refused permissio

p 2 3 cf- but the party worked the oil engine despite the refusal order. The mcl thereupon laid a charge sheet against the accused but the Commr has reported that the Sty. Sub Magistrate found the accused not guilty and acquitted him

p 2 4 cf- The Commr has now represented that this judgment is against law and is based on presumptions. He has therefore addressed the D.M to move th High Court for revision. He therefore requests to Govt to also address the D.M for moving the High court immediately for revision. address the D.M. immediately approve his action. This may be approved.

When the petitioner was refused a

...of the ~~mld for working the~~ oil engine he approached Govt with the request for reconsideration of the orders at K/7.8 CF. The matter was referred to the Commr. for remarks. In his report the Commr. has stated that when notices were issued to the party for the removal of the oil engine in pursuance of the orders of Govt, the party filed a suit in the Dist. Munsif's Court and brought an injunction on the municipality restraining it from meddling with the oil engine and its working. The Commr. has also stated the suit has been posted for hearing on 21-11-49 and that a copy of the Judgment will be sent after the suit is ~~finally~~ disposed of. ~~The receipt of the~~ result of the suit and the receipt of may be awa

~~The draft memo below is for approval~~

The case may be sent to Home W.O. with reference to 'M' on page 1 ante.

21/11/49

28.11.49.

E PH W.O
32261/49-4 EIC
2-12-49

ASSISTANT SECRETARY TO GOVERNMENT
3-DEC 1949
HOME DEPARTMENT

30/11/49 / Home

1/12/49

Home

Home dept

The file has been sent to this dept with reference to the request of 'N' on p4 2 of the Commissioner, Hospet Municipality for preferring an appeal against the acquittal by the Stationary Sub-magistrate, Hospet of the accused in C.C. No 2347/48 on his file. ~~the~~ Commissioner requests that ~~the Commissioner, Hospet Municipality~~ ~~requested~~ the D.M. Bellary may be moved addressed to move the High Court

X An p2? of pp 25-27 in N

... in memorandum for revision. The date of judgment is 26-10-1949
3 months' time expires on 23-1-1950
6 months' time will expire on 23-4-1950
The Municipal Health Officer, Hospet has already addressed the D.M. Bellary. It is not known what action is being taken on it. However, the D.M's remarks on the Comnr's proposal to move the High Court in the matter may be obtained in the first instance and then the P.P., Madras may be addressed on the advisability of preferring an appeal against acquittal in this case.

Pt 81-26-2/50
Ny. p 42 1/50
1661
16/12

The draft memo subtd. is for approval
E & P.H. may see after issue

6.12.49 SE
7.12.49
7/12/49 E.P.H. (ai.)

D. Despatch memo M. 12516/49-1, Home
7.12.49

E.P.H (T)

Home's 12516/49/M2
10.12.49

(Previous note of this Dept on pp 1-2 ante)

The note of Home Dept from p 2 ante and the draft memo below may be perused and the file returned to Home w.o.

DEPUTY SECRETARY
12 DEC 1949
97055
EDUCATION AND PUBLIC HEALTH DEPT.

13.12.49
f. 141v

17.12.49
Home dept

Home dept

EPH w.o 32261/49-573(PH)
15-12-49

(From the D.M., Bellary, No. 3629/49 E.1 dt 12-12-49)

ASSISTANT SECRETARY TO GOVERNMENT
16 DEC 1949
HOME DEPARTMENT

Please see this dept's note on pp 2-3 above, the memo to the D.M., Bellary on pp 3 c/f and his reply on p 4 c/f. The draft memo to the P.P. Madras subtd. is for approval. Issue as ...

SE
17.12.49
17-12-49
17/12/49